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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.992 OF 2004

Gulabrao R. Mane and others — Appellants
versus
Khanderao S. Mane & others — Respondents

Mr.R.A.Thorat for appellants.

Mr.Macchindra Deshmukh i/by Mr.Milind Deshmukh for respondents 1A to 1D.

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 09TH JULY 2007

PC :

1. The Appellate Court has, for justifiable reasons, come to the conclusion that the Appellants have failed to establish any connection with the family of the original Plaintiff. A genealogy was furnished by the plaintiff in paragraph 2 of the plaint. This genealogy was not specifically challenged or denied in the written statement. This aspect of the finding in paragraph 11 has not been contested in the course of submissions before this Court. However, it has been urged that the genealogy which was relied upon by the learned

Trial Judge at Exhibit-128 ought to be accepted having regard to the presumption as to the genuineness of certified copies in Section 79 of the Evidence Act and the presumption in regard to the documents which are over thirty years old in Section 90 of the said Act. The submission in regard to the genealogy at Exhibit-128 does not really arise at all in the first place having regard to the fact that the correctness of the genealogy which was set up by the Plaintiff, was not contested in the written statement.

2. That apart, the Appellate Court has discussed the evidence in paragraph 11 of the judgment and has found that the defence of the Defendants was completely contradictory. The Defendants have been found to have no connection at all with the family of the Plaintiffs. The decree of the Appellate Court in the circumstances does not warrant interference. The Second Appeal does not raise any substantial question of law and is accordingly dismissed.

3. In view of dismissal of the Second Appeal, Civil Application (Stamp) No.535 of 2001 does not survive and is accordingly disposed of.

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(DR.D.Y.CHANDRACHUD, J.)